

T. Rowe Price

Approver: HQAPP

Request:

- 1) Hold of discount for one year for specified products in addition to programs on this order: Projects, Purchasing, iProcurement, OFA
- 2) Addition language to be added to the ordering doc/OLSA - see below - customer hired outside attorney who requested these changes. This is more than we would normally agree to for a deal of this size, however, customer is currently in an indemnification dispute with another software vendor, so they are being extra cautious. This agreement has a term of 1 year in order to simplify future buys. Future opportunities in procurement, hr and projects are available to oracle in the next 12 months.
- 3) Term of OLSA for one year
- 4) Approval for electronic delivery of the software
- 5) One time waive of the 5% increase in support for renewals due 2/28:
Support order 3719658 due 2/28 for 319,399 (includes the 5% increase)
Support order 3900804 due 2/28 for 43,434 (includes the 5% increase)

Deal Summary:

Deal Summary	
Product Mix:	IAS EE, Financials, Personal Edition, iDS, Discoverer Desktop, EDI Gateway
License Discount	Drafted at 34% approval for 39% (iAS at 20%)
Support Discount	Drafted at 34% approval for 39% (iAS at 20%)
Support Options/Holds	Requesting existing support due 2/28 waive the 5% increase (one time)
Price Holds	Discount hold for one year for Projects, Purchasing, iProcurement, OFA
List License	302,120
List Support	66,466
Net License	188,473 worst case – contract drafted at 202,000
Net Support	41,464 worst case – contract drafted at 44,545
Net Price	229,937 worst case – contract drafted at 247,025
Price List Used	12/28/01 (note – we quoted this before the change). The fee change for applications only affects this list price by \$275)

Justification:

This is a strategic Financial Services customer. We are in heated competition with PeopleSoft and Lawson. We need this approval to secure the transaction this quarter. We will leverage this transaction to capture their purchasing, iProcurement, and HR apps within the year. Customer hired an outside attorney to negotiate the license agreement in order to protect them for future buys.

Recommendation:

Submitted By: Mike Malone

(For HQAPP Use only)



R:
C:
L:
A:
BP:

All language approved by Robert Wilmot.

1. Customer definition to be added to OLSA:

This agreement is between T. Rowe Price Investment Technologies, Inc. ("you" and "your") and Oracle Corporation ("Oracle"). Your directly or indirectly majority owned affiliates and subsidiaries specified on the attached entity exhibit as of the effective date of Amendment One to this agreement ("customer entities") may also order Oracle programs, services or technical support from Oracle in accordance with this agreement. By placing an order under this agreement the customer entity agrees to be bound by the terms of the applicable ordering document and this agreement. You shall be responsible for any breach of such terms by any customer entity. You may add additional directly or indirectly majority owned affiliates or subsidiaries to the entity exhibit upon Oracle's prior written consent. Any such affiliate or subsidiary which is a competitor of Oracle may not be added to the entity exhibit.

2. Assignment language slightly modified to fit into an OLSA amendment.

The assignment clause in the fourth bullet point of the Ownership and Restrictions section is superseded by the following paragraph which shall be added to the end of the Ownership and Restrictions section:

Assignment. Upon advance written notice to Oracle and provided that you have continuously maintained Update Subscription Service, you may assign your rights under an ordering document to an entity that is either (a) acquiring all or substantially all of your assets and assuming all liabilities related to such assets or (b) acquiring the division, business unit or operation of yours which uses Oracle software programs and assuming the liabilities of such division, business unit or operation. Additionally, the assignee must agree in writing to the terms and conditions of **such** ordering document and the agreement.

3. Divestiture language slightly modified to fit into an OLSA amendment.

The following shall be added to end of the Ownership and Restrictions section:

Divestiture. If another company is created through a divestiture or reorganization of your business ("divested entity") such divested entity may use a portion of the licenses provided under an ordering document for up to 12 months, on written notice to Oracle, provided that the divested entity is not a competitor of Oracle's, the combined use of you and the divested entity does not exceed the quantity of the License Type for which the applicable program is licensed to you, and the divested entity agrees in writing to the terms and conditions of such ordering document and this agreement. During this period, the divested entity may use the programs for either their business operations or your business operations. If the divested entity wishes to continue its use of the programs at the end of the time period specified above, the divested entity must execute a mutually agreeable ordering document and license agreement with Oracle which will govern its use of the programs.

4. In sentence one of paragraph one of the Warranties, Disclaimers and Exclusive Remedies section after "program documentation" and before "for one year" insert "provided (e.g. shipped or available for download) by Oracle".

Oracle warrants that programs will substantially operate as described in the applicable program documentation **provided (e.g. shipped or available for download) by Oracle** for one year after Oracle delivers them to you. Oracle also warrants that technical support and services ordered will be provided in a manner consistent with industry standards, and this warranty is valid for a period of 90 days from performance of the service.

5. The third paragraph of the Warranties, Disclaimers and Exclusive Remedies section shall be deleted and replaced with the following:

“IF ORACLE, AFTER A GOOD FAITH EFFORT, CANNOT SUBSTANTIALLY CORRECT A MATERIAL BREACH OF ORACLE’S WARRANTIES IN A COMMERCIALLY REASONABLE MANNER, YOU MAY END YOUR PROGRAM LICENSE, TECHNICAL SUPPORT OR OTHER SERVICES AND RECOVER THE LICENSE FEES, TECHNICAL SUPPORT FEES OR OTHER SERVICES FEES PAID TO ORACLE UNDER THE RELEVANT ORDERING DOCUMENT UNDER THIS AGREEMENT FOR THE RELEVANT PROGRAM(S), TECHNICAL SUPPORT OR SERVICE. IF THE RELEVANT PROGRAM(S) IS TECHNICALLY REQUIRED TO RUN ANY OTHER ORACLE PROGRAM(S) WHICH YOU HAVE LICENSED UNDER THE APPLICABLE ORDERING DOCUMENT, THEN YOU MAY END YOUR PROGRAM LICENSE, TECHNICAL SUPPORT OR OTHER SERVICES AND RECOVER THE LICENSE FEES, TECHNICAL SUPPORT FEES OR OTHER SERVICES FEES PAID TO ORACLE UNDER THE RELEVANT ORDERING DOCUMENT UNDER THIS AGREEMENT FOR SUCH OTHER ORACLE PROGRAM(S). THIS IS YOUR EXCLUSIVE REMEDY.”

6. End of Agreement:

a. terminate agreement for material breach only

b. The following paragraph shall be added to end of the End of Agreement section:

"You may end this agreement, or any license granted hereunder, at any time. The ending of this agreement, or any license hereunder, shall not limit you or Oracle from pursuing other remedies available, including injunctive relief, nor shall such ending relieve your obligation to pay all fees that have accrued or are otherwise owed by you under any Ordering Document. Your and Oracle’s rights and obligations under the sections of this agreement entitled What This License Agreement Covers, Ownership and Restrictions, Warranties, Disclaimers and Exclusive Remedies, Fees and Taxes, Indemnification, Entire Agreement, Limitation of Liability and Nondisclosure shall survive the ending of this agreement. Upon ending this agreement, you shall cease using and shall return or destroy all copies of the Programs licensed under this agreement. However, if you do not end this agreement but only end a portion of the Program licenses granted under this agreement, then you shall cease using and shall return or destroy all copies of such Programs."

7. Insert the following paragraph after the first paragraph of the Indemnification section:

“Following notification from you as provided herein, Oracle and you shall, for a period of time to be mutually agreed to by the parties, investigate and discuss in good faith whether such claim is entitled to indemnification under this agreement. During such discussions, you shall give Oracle full access to all of your records, data and personnel as may be reasonably necessary to make such determination. If the parties are unable to agree on whether Oracle is required to indemnify you under this agreement, Oracle shall either accept or decline defense of the third party claim, including negotiations for its settlement or compromise. If Oracle does not accept defense of such claim you may defend yourself against such claim, provided, however, that you shall not prejudice any of Oracle's rights or obligate Oracle to anything by your defense and/or settlement of such claim, including, but not limited to, the payment of any damages, costs, fees or expenses, nor shall you make any admissions on behalf of Oracle. If it is later determined by a court of competent jurisdiction, without right of further appeal, that you are entitled to indemnification under this agreement for such claim, then Oracle shall reimburse you for (i) the damages awarded to the third party on the issue of infringement in the judgment or settlement and (ii) the expenses (e.g. expenses for mailing and copying, filing fees, court costs, and attorneys' fees) incurred by you in the defense or settlement of such claim. Such reimbursement to occur within sixty (60) calendar days after you provide Oracle with valid receipts and documentation for all such damages and expenses. If Oracle declines the defense of such third party claim, Oracle may, at its option, accept such defense at a later time provided that Oracle reimburses you for the expenses (e.g. expenses for mailing and copying, filing fees, court costs, and attorneys' fees) incurred by you in the defense or settlement of such claim up to then.”

Note: customer is currently in a situation with a software vendor over an indemnification issue - that’s the motivation behind the extra language.

8. Nondisclosure. In paragraph three, sentence one, “three” shall be replaced with “five”. Confidential information shall be kept confidential for 5 years from date of disclosure.

9. Entire Agreement:

- a. In the last sentence the Entire Agreement section delete "or accepted online through the Oracle Store".
- b. In the Entire Agreement section insert the following sentence at the end thereof, "For the one year period specified in the Term section, orders accepted online through the Oracle Store shall be placed under the terms of this agreement."

10. General

- (a) change governing law to MD and remain silent on jurisdiction by deleting the following:

and you and Oracle agree to submit to the exclusive jurisdiction of, and venue in, the courts in San Francisco, San Mateo, or Santa Clara counties in California in any dispute arising out of or relating to this agreement

- (b) Audit once annually

At the end of the first sentence of the second paragraph of the General section, the following clause shall be inserted: "not more than once annually."

- (c) mutual notice provision

After the third paragraph of the General section, add the following new paragraph:

"Any notices to You under this agreement will be sent to: Kevin Meyd, 100 East Pratt Street, Baltimore, Maryland, 21202, with a copy to Henry H. Hopkins, Esq., 100 East Pratt Street, Baltimore, Maryland 21202."

11. After the General section, the following shall be added as a new section:

"Term

For a period of 1 year, additional orders may be placed under the terms of this agreement and each such ordering document must reference this agreement as OLSAv120101-____-FEB-2002."

12. The following shall be added as a new section:

"Viruses

Oracle will use reasonable efforts to test programs for viruses. Oracle will also maintain a master copy of the appropriate versions of the programs, free of viruses. If you believe a virus may be present in the delivered programs, then upon your request, Oracle will provide a master copy for comparison with and correction of your copy of the programs."

13. The following shall be added as a new section:

"Disabling Devices

Oracle will not electronically re-possess programs licensed to Customer by Oracle through remote command activation."

14. The following shall be added as a new section:

"Order of Precedence.

In the event of any inconsistencies between this agreement and an ordering document, the ordering document shall take precedence."

15. The following shall be added as a new section:

"Source Code.

Oracle shall retain in escrow a copy of the source code necessary to support the supported programs. The escrowed material shall be maintained under an agreement which provides that if Oracle ceases to be in the business of supporting the programs, the escrow agent shall furnish customer with a copy of the escrowed material that has become unsupported. Customer shall pay the escrow agent a nominal fee sufficient to cover the cost of reproduction and distribution of source materials, including reasonable administrative expenses thereto. Any escrowed material furnished under this provision shall be considered licensed subject to the terms of this agreement and shall be used solely to maintain the programs."

16. The following shall be added as a new section:

“Definitions

Only those definitions of terms which are referenced under "License Type" in Section A of an ordering document or are otherwise applicable to this agreement or an ordering document shall apply to this agreement or such ordering document.”

Ordering doc:

1. Attach tech support policies
2. Functionally equivalent tech support:

Oracle and Customer agree that Oracle may, without prior notice to Customer, change its Technical Support Policies from time to time. However, with respect to Technical Support service purchased by Customer for the program licenses acquired under this ordering document, Oracle agrees that it will not materially reduce the level of such Technical Support service available to Customer during a support year for which Customer has pre-paid the Technical Support service fees to Oracle.